Supreme Court of the United States.

OCTOBER TERM, 1873.

NO. 78.

THE BOARD OF SUPERVISORS OF CARROLL COUNTY, IOWA, PLAINTIFFS IN ERROR.

vs.

THE UNITED STATES *ex rel.* JOHN REYNOLDS.

In Error to the Circuit Court for the District of Iowa.

BRIEF FOR PLAINTIFFS, IN ERROR.

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STATEMENT OF THE CASE.

On the 17th of April, 1869, John Reynolds of the State of Indiana, commenced an action at law in the Circuit Court of the United States for the District of Iowa, to recover of Carroll County, in the State of Iowa, twenty thousand dollars, which he claimed to be due him from the county on its ordinary county warrants of which he was the holder.

On the 13th of May, 1869, a judgment by default was rendered in the said action for $19,946.76.

On 9th of May, 1870, an execution was issued on the judgment and returned *nulla bona*, by the marshal, on the day it was issued.

At the May Term of the Circuit Court in 1870, on the 18th of the month an order was made at the suit of the United States on the relation of John Reynolds the plaintiff, awarding an alternative writ of mandamus against the Board of Supervisors of Carroll county, to require them forthwith to levy a specific tax sufficient to pay the amount of the said judgment and interest and costs, or to appear at the next October Term of the Court, and show cause why they refused to do so.

The special tax was not levied, and at the October Term 1870, the Supervisors made return to the writ, and the matter was continued to the next May Term.

At the May Term in 1871, an additional and amended return to the alternative writ was made by the Supervisors, which is found in the record from page 166 to 168.

To this return the relator demurred, and at the May Term, 1871, the Circuit Court sustained the demurrer, and entered judgment that a peremptory writ of mandamus issue commanding the said Board of Supervisors to levy and collect a sufficient tax to pay the said judgment.

The return to the alternative writ sets forth, among other things, that the judgment of the relator was rendered upon ordinary county warrants, issued for the ordinary expenditures of the county, and that the Board of Supervisors had levied a county tax for the current year, of four mills on the dollar upon the taxable property in the county, which they alleged was the highest rate of county tax that they had the power to levy. The demurrer rests upon the ground that there could be no limit to the levy but the amount of the judgment. To the judgment sustaining this demurrer the Board of Supervisors excepted, and it is upon this they assign error. The question, therefore, to be decided in this case is, whether or not, under the laws of Iowa,

the Board of Supervisors of Carroll county can be compelled or have the power to levy a special tax, or any greater rate of county tax in one year, than four mills on the dollar to pay the relator's judgment.

ASSIGNMENT OF ERRORS.

The said plaintiffs in error say that there is manifest error on the face of the record in this cause in this to-wit:

1. The said Circuit Court erred in sustaining the demurrer to the said return to the alternative writ of mandamus, and in not overruling the same.

2. The said Circuit Court erred in holding that the plaintiffs in error had the power to levy a greater rate of county tax in one year than four mills on the dollar for the purpose of paying the said judgment and in ordering a peremptory writ of mandamus to issue to compel them to do so.

3. The said Circuit Court erred in ordering, notwithstanding the return to the alternative writ herein, a peremptory writ of mandamus to issue to compel these plaintiffs to levy and collect a sufficient tax to pay the said judgment, and in holding that they had the power to levy that amount of tax in one year, in addition to the four mills of county tax which their said return showed they had already levied.

ARGUMENT.

I.

As already stated the judgment in this case is founded upon the ordinary county warrants of Carroll county. I will then in the first place point out the distinction made by the laws of Iowa, between ordinary and special or extraordinary county indebtedness, and ordinary and special county revenue.

The sections now to be cited from the Iowa Revision of 1860, were taken from the Code of 1851 by which the

county judge was made financial agent of the county. By a law which took effect on the first of January, 1861, the Board of Supervisors became the financial agents in place of the county judge and so continue.

Section 250 of the Revision of 1860, which was Sec. 114 of the Code of 1851, is this: "The county judge may submit to the people of his county at any regular election or a special one called for that purpose, the question whether the money may be borrowed to aid in the erection of public buildings; whether the county will construct, or aid to construct any road or bridge which may call for an extraordinary expenditure; whether stock shall be permitted to run at large, or at what time it shall be prohibited; and the question of any other local or police regulation not inconsistent with the laws of the State. [No contract made by any county judge for the use of or for the erection of county buildings, where the expenditure exceeds two thousand dollars, shall be legal unless it is first submitted to a vote of the people of his county, as provided in sections one hundred and thirteen (113) and one hundred and fourteen(114.)] And when the warrants of the county are at a depreciated value, he may in like manner submit the question whether a tax of a higher rate than that provided by law shall be levied, and in all cases when an additional tax is laid in pursuance of a vote of the people of any county, for the special purpose of repaying borrowed money, or of constructing or aiding to construct any road or bridge, such tax shall be paid in money and in no other manner."

The sections following to 260 contain the details for the submision of questions and provide for carrying into effect the propositions mentioned in Sec. 250, which may be adopted by a vote. Section 252 declares:

"When a question so submitted involves the borrowing or the expenditure of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof in addition to the usual taxes, as directed in the following section, and no

vote adopting the question proposed will be of effect unless it adopt the tax also."

Section 253 provides that "the rate of tax shall in no case be more than one per cent. on the county valuation in one year." Section 260 says, "money so raised for such purposes is specially appropriated and constitutes a fund distinct from all others in the hands of the treasurer, until the obligation assumed is discharged."

The sections of the statute here cited and referred to contain the only provisions for the laying of special county taxes that exist or have existed since the year 1851, except that on the 30th of March, 1870, an act of the general assembly was passed to provide for funding county indebtedness by issuing county bonds and laying special taxes to pay them. See Chap. 54 of Iowa acts of 1870; this last mentioned act has no bearing upon the present case and is only referred to as a qualification of the statement here made.

Sec. 710 of Rev. 1860 is as follows: "The Board of Supervisors of each county in this State, shall annually as hereinafter provided, levy the following taxes upon the assessed value of the taxable property in the county.

1st. For state revenue one and one-half mills on a dollar, when no rate is directed by the census board, but in no case shall the census board direct a levy to be made exceeding two mills on the dollar.

2d. For ordinary county revenue including the support of the poor, not more than four mills on a dollar, and a poll tax of fifty cents.

3d. For support of schools not less than one nor more than two mills on a dollar.

4th. For making and repairing bridges not more than one mill on the dollar, whenever the Board of Supervisors shall deem it necessary."

The provision of this section as to the rate of ordinary county tax has not been changed since 1860. And the statutes above cited and referred to contain all the power that is given by the laws of Iowa for the levy of county taxes. (I know that it has been claimed that Sec. 3275 of

the Revision grants additional power to levy county taxes. Of that hereafter.)

Sec. 318 which is in the Article of the Revision of 1860, relating to the Board of Supervisors, provides, that "the board is authorized and required to keep the following books:

1. A book to be known as the "minute book," in which shall be recorded all orders and decisions made by them, except those relating to roads, and in which, orders for the allowance of money from the county treasury, shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively through each year.

2. A book to be known as the "road record," in which shall be recorded all proceedings and adjudications relating to the establishment, change, or discontinuance of roads.

3. A book to be known as the "warrant book," in which shall be entered in the order of their issuance, the number, date, amount, names of the drawee of each warrant drawn on the treasury, and the number of warrants as directed in relation to the minute book."

Sec. 754 provides, that "county warrants shall be receivable at the treasury of the proper county for the ordinary county tax."

Sec. 250 above cited, requires special county taxes to be paid only in money in all cases, unless the case where additional taxes are voted on account of the depreciation of county warrants be an exception.

Citations enough have been made to show the distinction between ordinary and special indebtedness, and between ordinary taxes and special; and to show that the two classes of indebtedness are distinct and separate in the source of the power which enables the supervisors to contract indebtedness and to levy taxes for its payment. Enough has also been cited to make the meaning clear of that part of the return to the alternative writ which states that "the indebtedness on which the relators judgment is

founded was evidenced by the ordinary county warrants, which purported on their face, and were in fact, issued for the ordinary expenses and expenditures of said county, and no part of the same were issued by authority of any vote of the people of said county for any extraordinary expenditures for any work of internal improvement." (See record p. 167).

That all the indebtedness on which the judgment was founded, consisted of ordinary county warrants payable from the ordinary revenues of the county, is twice shown in the record. Once by the return to the alternative writ which the demurrer admits, and again by the warrants themselves which are set out in the record from page 2 to 158.

These warrants were not negotiable at the law—merchant and the holder took them subject to any defense that might exist against them. See Clark vs. Polk County, 19 Iowa 248. The rulings of the Iowa court in that case agree entirely with the decision of this court in the case of the Police Jury vs. Britton, 15 Wal. 566. The county officers however, did not see cause to defend against the warrants and suffered judgment to go by default. See judgment on p. 160 of record. The reasons for this sufficiently appear from the return to the alternative writ—167 and 168 of record. Whatever may be thought of some parts of this return as pleading, it is all undoubted history. From the identity of names it appears that many of the warrants were issued to the county officers themselves.

II.

The judgment in this case having been rendered upon ordinary warrants, payable from the ordinary revenues of the county, and the Board of Supervisors having levied four mills ordinary county tax, which is the highest rate as limited by Sec. 710, that they could levy, their return to the alternative writ setting forth these facts was a complete answer to the information, and a bar to the issuance of the peremptory writ unless some other statute gives the power to levy a special tax for the payment of the judgment. It is not pretended that any of the statutes above cited gives

this power. The claim is, that section 3275 of Rev. of 1860 gives the power; and it is not claimed that any other statute does.

Sections 3274 and 3275 of the Revision of 1860 are as follows:

"SEC. 3274. Public buildings owned by the State, or any county, city, school district, or other civil corporation, and any other public property which is necessary and proper for carrying out the general purposes for which any such corporation is organized, are exempt from execution. The property of a private citizen can in no case be levied upon to pay the debt of a civil corporation."

"SEC. 3275. In case no property is found on which to levy, which is not exempted by the last section, or if the judgment creditor elect not to issue execution against such corporation, he is entitled to the amount of his judgment and costs in the ordinary evidences of indebtedness issued by that corporation. And if the debtor corporation issues no scrip or evidences of debt, a tax must be levied as early as practicable, sufficient to pay off the judgment with interest and costs."

On the 30th of March, 1870, an Act of the Iowa Legislature was approved in the following words:

"SEC. 1. *Be it enacted by the General Assembly of the State of Iowa*, That to section 3275 of the revision of 1860, there be added the following words: "And when a tax has been so levied, and the same or any part thereof, has been collected, the treasurer shall, on demand, without a warrant from the Board of Supervisors, pay the same to the creditor or his attorney, taking a receipt therefor, and if not demanded, may pay the same to the clerk of the court, where the judgment was rendered, taking his receipt therefor." " Chap. 43 Acts 13 General Assembly p. 43.

In 1873 we have had another revision of the Iowa statutes, that took effect on the 1st of September of this year, called the code of 1873. In this last code the sections equivalent to the two above cited are the following:

"SEC. 3048. Public buildings owned by the State, or any county, city, school district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt from execution. The property of a private citizen can in no case be levied on to pay the debt of any such."

"SEC. 3049. If no property of a municipal corporation against which execution has issued can be found, or if the judgment creditor elect not to issue execution against such corporation, a tax must be levied as early as practicable to pay off the judgment. When a tax has been so levied and any part thereof shall be collected, the treasurer of such corporation shall pay the same to the judgment creditor, or to the clerk of the court in which the judgment was rendered, in satisfaction thereof."

The Revision of 1860 was the law in force when the judgment below was rendered in this case. I have cited the code of 1873 to show that the direction for the levy of a tax to pay judgments contained in the law of 1860, has been re-enacted in the code of 1873, almost in the same words and with no change at all in the substance as that section has been construed by the Iowa courts. The law of 1860 seemed to contemplate that a judgment might be discharged by scrip or evidences of debt, and that only in cases where no scrip was issued, taxes were to be levied. But in the cases from the Iowa reports to be cited presently, the Iowa courts have held that corporations that do issue scrip can be compelled to levy the highest rate of tax which the law empowers them to levy for the purpose of paying judgments. Following the courts in this respect the Legislature in the last Revision left out all that was said about paying a judgment with scrip. In every other respect the one statute is the exact equivalent of the other. See the State ex rel. Clark et. al. vs. City of Davenport, 12 Iowa 342, where the court holds that a creditor might at his election, take scrip in payment of his judgment, but cannot be compelled to do so under this section. This case also holds

that it is not the judgment but the indebtedness on which the judgment is rendered that determines the fund from which payment is to be made. In other words, in the case of a judgment rendered on special indebtedness, for the payment of which special powers of taxation are given, the courts can enforce the levy and collection of such special taxes for its payment. But in the case of a judgment rendered upon ordinary indebtedness, payable from the ordinary revenues of the corporation, the judgment creditor can look only to the ordinary revenues for payment and cannot enforce the levy and collection of a special tax for that purpose. The courts will, however, compel the levy of the highest rate of ordinary tax for the purpose of paying judgments rendered upon ordinary indebtedness.

The Supreme Court of Iowa has held uniformly that section 3275 does not invest corporations with the power to levy taxes. That court holds that this section directs duties to be performed by the taxing officers, under powers given elsewhere in the statute, but does not extend their powers beyond the limits prescribed in other parts of the statutes, where the power to levy taxes is expressly given, and the limit fixed beyond which taxes cannot be levied. The decisions of that court on this subject have been uniform and extend through a period of about ten years. The first case that I shall notice, that of Clark, Dodge & Co., vs. The City of Davenport (14 Iowa 494) was decided at the June Term in 1863; and the last two at the June Term in 1873. The last two cases have not been officially reported. In the one from Sac county, so much of the opinion as relates to the question in this case, was published in the last July number of the Western Jurist, with the dissenting opinion of Mr. Justice Cole, (Vol. 7 p. 354). The other case from Carroll county has not been published. I will print these opinions because the court cannot otherwise have access to them so readily; and they will stand in the place of any argument I could make on this point.

The opinions here copied are taken literally from the

copies of the opinion on file in the Supreme Court of Iowa, certified by the clerk under the seal of the court. The opinion next following was delivered in the decision of two cases from Sac county, entitled The Iowa Railroad Land Co. vs. Sac county and Ed. R. Duffie, Treasurer, and the same plaintiff vs. Sac county and Wm. H. Hobbs, Treasurer, which were argued and submitted together. The complainant and apellant filed bills in equity in both cases to enjoin the sale of its lands for illegal taxes, levied in the one case for the year 1870, and in the other for the year 1871. Several taxes were complained of but I copy only so much of the opinion as relates to the tax levied to pay judgments. In both cases the judgment of the district court was rendered on this question upon a demurrer to the bill and from the judgments sustaining the demurrers the appeals were taken. The judgment taxes in both cases were levied voluntarily by the Board of Supervisors without a writ from the court directing it to be done.

The facts are stated in the opinion:

Opinion by MILLER, J. * * *

was authorized to levy for the ordinary expenses of the county, and for the payment of said judgments; and that having levied in each year, such maximum tax, the board had no power or authority to levy the additional tax of ten mills for the payment of the judgments.

The general question here involved, has been several times passed upon by this Court. In Clark, Dodge & Co., vs. The City of Davenport, 14 Iowa 494, was an action of mandamus to compel the city to levy a specific tax, sufficient to pay off a judgment rendered against it in favor of the plaintiffs. The city charter provided that "the city council shall have power and authority to levy and collect taxes upon all taxable property, real, personal and mixed, within said city, not exceeding one-half of one per centum per annum, upon the assessed value thereof." By an amendment to the charter, it was provided "that whenever there is a deficiency in the ordinary revenue of the city, after payment of the ordinary city expenses, to pay the semi-annual interest on the debt already created, the city council shall levy a specific tax upon the assessment of the current year to pay said interest."

It was set up in the answer, that the city council had exhausted its power to levy taxes under the power granted to the city, under these provisions of its charter. It was claimed by plaintiff however, that under sec. 3275, of the Revision of 1860, the power was conferred and the duty imposed upon the city council to levy a special tax sufficient to pay off plaintiff's judgment.

It was held that the power of the city to levy taxes was restricted or limited to the rate and amount specified in these provisions of its charter and that section 3275 of the Revision did not confer upon the corporation the power to levy taxes where such power is not otherwise conferred by law.

It is held also that a municipal corporation can exercise the power of taxation only when expressly conferred by the legislature.

Section 3274 of the Revision exempts from execution

the public buildings and other public property of civil corporations and also exempts the property of private citizens from being levied upon to pay a debt of a civil corporation. Section 3275 is as follows; "In case no property is found on which to levy, which is not exempt by the last section, or if the judgment creditor elect not to issue execution against such corporation, he is entitled to the amount of his judgment and costs in the ordinary evidences of indebtedness issued by that corporation. And if the debtor corporation issues no scrip or evidences of debt, a tax must be levied as early as practicable sufficient to pay off the judgment with interest and costs." It was held in the case referred to, that this last section conferred no independent power upon the city to levy a specific tax to pay off a judgment against it.

In Coy vs. The City of Lyons 17 Iowa 1; also a proceeding by mandamus to compel the levy of a special tax to pay a judgment against the city, the same doctrine is recognized. COLE. J. in the opinion says; "The plaintiff holds his judgment and has demanded payment and the levy of a tax to satisfy it and brings his action for mandamus to compel such levy. The defendant shows, in defence, that the city council has no authority to levy exceeding a certain rate per cent. which may not in one year, satisfy the judgment. The object of the suit is to compel payment and the defense only shows *an inability under the law* to levy sufficient to satisfy it in one year, but a clear ability to do it in subsequent years."

Oswald vs. Thedinga 17 Iowa 13, was an action against the mayor and city council of Dubuque to make them personally liable for a refusal to levy a tax to pay a judgment which the plaintiff recovered against the city, and it is held that the plaintiff having obtained his judgment it became the duty of the city council under the law, as early as practicable to levy and collect a tax for its payment, but that it would be a legal excuse, for refusing to levy the tax if the taxing power had been fully exhausted before the demand to do so was made.

Porter vs. Thomson, 22 Iowa, 391, was a case similar to the one last named, and it was held that the officers were liable after a demand to levy the taxes, if within their power under the law, and a refusal to comply with such demand. And it was further said in that case, that "if the taxing power was at the time, or for that year exhausted, there would be no liability for the failure, for the statute must be construed in connection with the taxing power of the corporation. It was not intended that a special levy should be made, which with prior or existing levies would exceed the maximum rate or per centum fixed in the charter." And it is also said in that case, that should the necessary current expenses of the corporation "absorb the whole taxes which the officers are allowed by law to levy, they would not be bound to comply with the demand. That is to say, if the actual necessary expenses of running the city government required a levy of one per cent., (the maximum rate allowed) there would be no liability for refusing to levy more.

In the case of Coffin vs. The City Council of Davenport, 26 Iowa, 515, the same general doctrine was held and practically applied in the modification of the judgment of the court below.

The principle established by these cases is that section 3275 of the Revision imposes a duty upon the proper officers of a municipal corporation to levy and collect a tax to pay a judgment or judgments rendered against the corporation only when the power to levy taxes is elsewhere expressly given by law, and thatp ower has not been exhausted by having levied the maximum rate allowed by the statute; that no independent power of taxation is conferred by that section, but that it can only be exercised in connection with the power of taxation elsewhere conferred by law.

It is claimed however by counsel for appellees that all these cases arose under acts or charters where the power of taxation was limited to a certain specific rate in the aggregate. This is true and yet it is difficult to see why the prin-

ciple established by the decisions referred to does not apply equally to a county as to a city corporation, for by the law conferring the power of taxation upon the board of supervisors, the maximum rate they may levy for the several purposes named is also fixed. See section 710 Revision of 1860, which is as follows:

"That the board of supervisors of each county in this State, shall annually as hereinafter provided, levy the following taxes upon the assessed value of the taxable property in the county:

1. For State revenue, one and one-half "(now two and one-half)" mills on a dollar, &c.

2. For ordinary county revenue, including the support of the poor, *not more than four mills on a dollar* and a poll-tax of fifty cents.

3. For support of schools, not less than one or more than two mills on a dollar.

4. For making and repairing bridges, not more than one mill on the dollar whenever the board of supervisors shall deem it necessary."

It will be observed that the law nowhere confers upon the counties, as such, the power to levy any taxes whatever. The board of supervisors have conferred upon it, by the above provisions, the power to levy the state taxes within a certain limitation, as well as the county and school taxes, with like limitations. These provisions contain and confer the only power that is given by law to the board of supervisors to levy any county tax for any purpose, (except Sec. 250 of the Revision when the warrants of the county are depreciated.) The board is authorized to levy for ordinary county revenue including the support of the poor *not more than four mills on a dollar*, and a poll tax of fifty cents; also if they deem it necessary they may levy a bridge tax of *not more than one mill* on the dollar. This section confers the only authority to levy county taxes, and limits the power therein conferred just as plainly as a provision in a city charter conferring authority on the corporation to levy

taxes not exceeding a fixed rate. But it is said that section 3275 requires when a judgment is rendered against a county that a tax shall be levied to pay it, and since section 710 confers authority only to levy taxes for specific purposes, without naming a tax to pay off judgments against the county, the power to do so must be found in section 3275 We think this argument is not tenable, for one of the evident purposes of ordinary county revenue is for the payment of its debts, whether arising upon county warrants or upon judgments obtained on such warrants.

It is manifest that section 710 was intended to confer authority upon the board of supervisors, to levy all the taxes proper, to enable the counties of the State to raise revenue for all needful purposes, and that no further power of taxation was intended to be given by that section than is therein expressed. If then, section 3275 gives no independent power of taxation, but only calls that power into exercise when it is elsewhere given by law, then we must look to section 710 for the power to tax; when we do this, we find it there limited, and we can see no solid reason why the limitations contained therein, have not the same controlling operation as if contained in a city charter. To our mind, there is no difference in principle.

We are aware that the supreme court of the United States, in Butz vs. City of Muscatine, 8 Wallace 575, construed section 3275 of the Revision, to confer and independent power to levy a tax to pay a judgment against the city, which is in direct conflict with the decisions of this court in the cases before cited. That case arose in the federal courts, and was not taken from this court, on appeal or writ of error, and therefore cannot be regarded as overruling the cases on the same question in this court, nor are we prepared to over-rule them.

It is further urged that the law confers upon county municipalities the power to contract debts which may exceed its ability to pay, and at the same time meet the ordinary current expenses of the county government with a

tax of four mills on a dollar of the taxable property within the county; that the revenue of the county thus obtained, may all be absorbed in defraying these current expenses, and in such case, the creditor of the county will be practically denied a remedy for the collection of his debt.

There is some force in this argument, and yet, not as much as would seem on first blush; for when the creditor of the county becomes such, he does so in view of what the law is at the time. He is supposed to know the law and what are his rights and remedies under it. But if the law is defective in this respect, the remedy is with the legislature and not with the courts.

The board of supervisors having levied the maximum rate of tax, which the law authorized, it had no authority to levy the additional socalled judgment taxes for the years 1870 and 1871.

The plaintiff is therefore entitled to a decree enjoining the sale of its lands for such taxes, for costs of advertising beyond those herein indicated, which decree will be rendered in this court, if plaintiff so elects, or the cause will be remanded for that purpose to the District Court. *Reversed.*"

The case following from Carroll County, entitled *Polk and Hubbell vs. W. S. Winnett et. al.*, involves but one point, and we copy the statement of the case as prepared by the court, and the opinion, at length. The point involved is the same that we submit in this case, and the same county is the party. The cases are in all respects alike. The only difference that can be stated is, that they arose in different courts.

"Action for a mandamus. The plaintiffs', in their petition, allege that on the 27th of May, 1870, they recovered in said Carroll Circuit Court, a judgment against Carroll county, for the sum of $3964.44 debt, besides costs, which (except four small payments that are stated,) still remains in full force and unpaid; that on the 17th day of November, 1870, they also recovered in said court, another

judgment in Carroll county, for the sum of $5489.08, besides costs, which is still in full force and unsatisfied; that said county has no property not exempt from execution, out of which the plaintiff's could make said judgments or any part thereof; that the defendants are the acting board of supervisors for said county, whose duty it is by law, to levy a tax sufficient to pay off said judgments; that when they legally convened as a board of supervisors, and on the 9th of July, 1872, the plaintiffs requested and demanded that they levy a tax sufficient to pay said judgments, interest and costs, which they failed and refused to do. The plaintiffs ask a writ of mandamus to compel them to so levy a tax, and for other relief.

The defendants for answer, admit that they compose the board of supervisors for Carroll county; that the plaintiffs obtained the judgments and they are unpaid as stated; that the demand for a levy of the tax was made and refused as alleged. And the defendants aver that said judgments were rendered on the ordinary county warrants, issued to pay ordinary expenses of the county, such as officer's salaries, juror's fees, &c., and for building bridges and payable out of the ordinary county and bridge revenue; that they have no power to levy a tax to pay said judgments, exceeding four mills on the dollar for any one year for ordinary revenue, and three mills for bridge fund; that they had levied the full rate allowed for 1872, and the same was necessary to meet the ordinary current expenses; that the county indebtedness was already in excess of five per cent. upon its taxable property, and could not be increased; that it is not practicable to levy the tax before September, 1873.

The plaintiffs demurred to this answer, because the facts it stated did not constitute a defense. This demurrer was sustained; and the defendants refusing to answer further judgment was rendered for plaintiffs, as asked.

The defendants appeal.

MANNING & HASTINGS, for Appellants.
POLK, HUBBELL AND GOODE, for Appellees."

"COLE, J.

The question involved by the demurrer to the answer, is, whether the board of supervisors having already levied a tax for the current year to the full limit of its power to levy for ordinary and bridge revenue, may be required to levy a further tax for the payment of a judgment rendered upon warrants issued for ordinary expenses and bridge purposes. The Circuit Court answers this question in the affirmative. The defendants appeal, and insist upon a negative answer.

This question was, in effect, answered in the negative by the majority opinion in the case of the Iowa Railroad Land Co. vs. Sac County, (decided at the present term,) where it was *held* that a board of supervisors had no power or authority to levy a tax to pay a judgment rendered upon warrants issued for ordinary and bridge revenue, where they had in the same year, levied the maximum rate allowed for these purposes. The writer hereof dissented from that holding. But we are quite agreed in the opinion that if the board of supervisors have no power or authority under the statute, to levy a tax to pay such a judgment, a court cannot confer upon them the power, and hence, cannot compel them by mandamus to levy the tax. For, it is well settled that mandamus in such cases, can only issue to compel a board or officer to do that which the law authorizes and requires to be done. McCready vs. Sexton, 29 Iowa 356. The members of the court severally adhering to the views expressed in the opinions filed in the case of the Iowa Railroad Land Co. vs. Sac County *supra*, it follows that the judgment in this case must be *Reversed*."

The construction given by the Supreme Court of Iowa to sec. 3275, in the cases cited, has been uniform since the first case arose under that section in 1863. The decisions have all been consistent with each other, and they stand, I respectfully submit, upon well established principle.

"Specific provisions relating to a particular subject,

must govern in respect to that subject as against general provisions in other parts of the law, which might otherwise be broad enough to include it."

Felt vs. Felt, 19 Wis. 193.
DeWinton vs. Brecon, 26 Beav. 533.
Prelty vs. Solly, Id. 606.

Section 3275, being general and applying to all corporations alike, and merely directing how the payment of judgments is to be provided for, must upon the principle stated in the last quotation, be controlled and limited by the specific enactments, which in any given case, expressly give to particular officers the power to levy taxes, and at the same time limit the rate of the levy; as for example, section 710, which provides that the board of supervisors shall levy annually an ordinary county tax, which shall not exceed four mills on the dollar. The intention of the legislature, as plainly expressed in the statutes we have cited is, to limit the levy of county taxes to four mills on the dollar, unless the tax-payers themselves, by a vote authorize an additional special levy. See Rev. sec. 250 and seq. above cited. If section 3275 creates the power to levy special taxes to pay judgments rendered upon ordinary indebtedness, then all these provisions intended to limit the power of public officers, and protect the tax-payers are nullified by the simple process of procuring a judgment to be rendered upon liquidated county indebtedness. The return in this case shows that a county with less than 1500 inhabitants, issued over $150,000 of ordinary warrants in three years. In the same time nearly $90,000 of these were reduced to judgment. If the legislature had intended that special taxes should be levied without limit, to meet such indebtedness, instead of inserting clauses to limit the rate of taxes, it would have been more consistent to declare that the citizen should be entitled to retain only so much of his property as might remain after knavery and rapacity had taken all from him they could get.

No honest man can complain that as between dishonest

officers and rapacious speculators on the one hand and tax payers on the other, that the legislature should so far protect the tax-payer that he shall not be compelled to pay a greater rate of county tax than four mills on the dollar. It is enough that he can be compelled to continue to pay that rate until debts like this shall have been discharged by increased revenues arising from increase in values. And a creditor like the defendant in error in this case, who can obtain payment on such terms gets all that he bargained for.

In addition to the decisions of the Supreme Court of Iowa above cited, I call attention to the fact that the legislature in the Code of 1873, has re-enacted in the same language the material parts of section 3275 of the Revision of 1860. (Code of 1873, sec. 3049). The legislature has thus adopted the construction given to that statute by the Supreme Court.

"The re-enactment of a previous statute operates as a legislative adoption of the judicial construction of such statute."

Bank of Mobile vs. Meagher, 33 Ala. 622.
McKee vs. McKee, 17 Md. 352,
Dreman vs. People, 10 Mich. 169.
Draper and al. vs. Emerson, 22 Wis. 147.

It is therefore as fully settled as legislative enactments and judicial determination can settle anything, that by the laws of Iowa, a special tax cannot be levied to pay a judgment against a county rendered upon ordinary county warrants. And that when the board of supervisors have levied an ordinary county tax of four mills on the dollar, they have levied the greatest tax which they have the power to levy for the payment of such judgment.

I need not cite cases to show that the law of Iowa is, under the 34th sec. of the Judiciary Act, (1 Stat. 92,) the law of this court in this case. I will, however, refer to one or two cases, where the construction given to the statutes of a state by the state courts has been considered.

"The construction given to a statute of a state by the highest judicial tribunal of such state, is regarded as a part of the statute, and is as binding upon the courts of the United States as the text."

Leffingwell vs. Warren. 2 Black 599.

"Decisions of state courts as to local laws, become the law of the state, as much as though enacted by the legislature."

Christy vs. Pridgeon, 4 Wal. 196.

It makes no difference, that some of the decisions of the Iowa court cited above, were made since the decision of this case in the Circuit Court. The two opinions copied into this brief, were delivered in June last. But they both turn upon the construction to be given to section 3275, of the Revision of 1860, and they follow the construction given to that section in Clark and al. vs. Davenport, (14 Iowa 494,) ten years before, and in all the cases in which the court had construed that section since.

As an exposition of the Iowa Statute, the time at which they were made, is immaterial. In the case of the United States vs. Morrison, (4 Peters 124,) this court followed the decision of the Court of Appeals of Virgina, upon the construction of a state statute, and reversed the decree of the Circuit Court made before the decision in the Court of Appeals.

III.

The only answer that I have ever heard to the views stated above, and all the answer that I apprehend can be made, is, to refer to the opinion of this court in the case of Butz vs. the City of Muscatine. (8 Wal. 575). But I respectfully submit, that that case furnishes no answer at all, to the proposition urged by the plaintiff in error in this.

It is proper to remember that all the cases that have been before this court from Iowa, relating to county or city indebtedness, arose upon special indebtedness contracted in

aid of railroads under section 250 above cited in the case of counties, and under some like provision of the city charter in the case of cities. I need not refer to the cases in detail to support this statement, for I believe the fact will not be questioned. All the cases cited above from Iowa, in which the Supreme Court of the state has held that a special tax could not be levied to pay a judgment, are cases in which the judgment was rendered upon ordinary indebtedness. The Iowa Court has held that mandamus will lie to compel the levy of a special tax to pay a judgment rendered upon special indebtedness. See Dox vs. Johnson Co., 12 Iowa 237; Clark and al. vs. Davenport, Id. 335 and 14 Iowa 494.

Since, therefore, no case has ever been before this court, in which the question of levying a tax to pay a judgment against a county in Iowa, rendered upon ordinary indebtedness was involved, it is impossible that there can be any conflict or difference in the decisions of the two courts upon the question presented in this case.

It is true that Mr. Justice Miller, in the opinion in the case from Sac county above, speaks of the construction given by this court to section 3275 of the Iowa Revision, as being in conflict with the decisions of the Iowa Court.

I conceive that this conflict is rather apparent than real. It is certain, that in Butz vs. Muscatine, the judgment was rendered upon special indebtedness, whilst in the cases referred to by Judge Miller, decided in the Iowa Courts, the judgments were all rendered upon ordinary city or county indebtedness. But all I need do at present is, to point out the difference in matters of fact between the case at bar and that of Butz vs. Muscatine. In Butz vs. Muscatine, the judgment was rendered upon interest coupons attached to city bonds issued in pursuance of a vote of the people of the city, in payment of stock subscription to the Mississippi and Missouri Railroad. I am not sure that the record in that case shows that there had been a vote of the electors of the city, authorizing the city to subscribe stock

and issue the bonds in payment, but I am assured upon un
doubted authority, that such was the fact. This fact the
makes the case analogous to Dox vs. Johnson county abov
cited, in which the Iowa Court held that a mandamu
would lie to compel a special tax to pay a judgment
At all events this court assumed (no doubt correctly) tha
the city by issuing the bonds had become pledged to pro
vide special funds for their payment and hence held that th
city could be compelled to levy a special tax for that pur
pose. In the case at bar all the warrants upon which th
judgment is based were drawn upon the ordinary funds o
the county "not otherwise appropriated." These warrant
did not import any pledge or obligation to provide any
thing beyond the ordinary revenues of the county for thei
payment.

In the Muscatine case the bonds were negotiable secur
ities, having many years to run, with annual interest pay
able upon the coupons attached, and framed so as to invit
purchasers under the protection of the law merchant. Thi
kind of securities the law favors for the benefit of commerce
In the present case the county warrants were simply design
ed to authorize the county treasurer to pay to the creditor
of the county, the sum of money which the board of super
visors after auditing his account had found to be du
him. They were not intended to circulate as a mercan
tile commodity. They had no protection from mercantil
usage. Every one who took them, did so, subject to al
defenses that might be urged against them. It is true they
might be assigned, as all contracts are assignable by th
laws of Iowa. I do not state these facts as implying anything
against the judgment, either as a means of liquidating th
amount due, or of enforcing payment from the proper fund
but I do insist that they very clearly distinguish this judg
ment from one founded upon negotiable bonds; and tha
they bear very strongly against any implied obligation o
the part of the county to provide special funds for its pay
ment.

Again the bonds in the Butz case were issued in 1854

In this case, all the warrants were issued in 1866, and afterwards, except three that were issued in 1865. In that case, the court in discussing the liability of the city to levy a special tax for the payment of the judgment says: "This contract was entered into in 1854. The earliest of the adjudicated cases to which we have referred, was made in 1862. If the construction ultimately given to the statute had preceded the issuing of the bonds, and become the settled law of the state before that time, the case, as regards this point, would have presented a different aspect."

In the present case, we have brought up the whole record for the purpose of showing the date of the county warrants upon which the judgment is founded as well as their quality. I can hardly expect the court to read all the warrants set out in the record. The one first issued bears date on the 27th of March, 1865, and is for $2, and is set out on p. 48 of record. Two more of the warrants set out on p. 67, were issued in 1865, the one for $4, and the other for $25. All the rest of the warrants were issued in 1866—7 and 8, except one for $400, which is dated on the 15th of January, 1869. (Record p. 16.) The record does not show the time when the defendant in error became possessed of the warrants. He, of course, by his agents, gathered them up in the county for the purpose of speculation. He probably began his action soon after he had got the batch together. The summons is tested on the 17th of April, 1869. (Record 159 and 160.) The warrant last issued is dated on the 15th of January. If he bought them all at nearly the same time, as is probable, he must have done so in the early part of 1869. It then follows that five of the cases cited by the Supreme Court in the case above from Sac county, in which the court had held that section 3275 did not empower civil and municipal corporations to levy special taxes to pay judgments rendered upon ordinary indebtedness, had been decided before the defendant in error acquired any interest in the subject matter of this suit. Clark and al. vs. Davenport (14 Iowa 494) was decided by

the Supreme Court at the June term, 1863. Coy vs. Lyons, (17 Iowa 1) and Oswald vs. Thedinga (17 Iowa 13) were decided at the June term in 1864. Porter vs. Thomson (22 Iowa 391) was decided at the June term in 1867, and Coffin vs. Davenport (26 Iowa 515) at the December term in 1868. The first three of the decisions here mentioned, were made before any of the warrants sued on in this case were issued. Since the decisions of the Iowa Court upon the point here stated, have been uniform, and since the legislature by re-enacting the same statute in the same language has declared in effect that the sense put upon the statute by the court is the sense always intended by the legislature, it cannot be claimed that the defendant in error has been misled or injured by any change in the law or in its interpretation. Clark vs. Polk county (19 Iowa 248) was decided at the December term in 1865, by which he was also fully informed that the warrants were not negotiable.

And since the law on the point in issue was settled precisely as it is now settled, before the defendant became interested in the subject of the action, and before the warrants which were the subject of the action were drawn, it cannot be claimed that the obligations of his contract with the county, has been in any way impaired by subsequent enactments or adjudication. Since there is no other ground upon which this court is authorized to differ from the State Court in the construction of the statute under consideration, than that the statute or the construction given it impairs the obligation of a contract, I respectfully submit that the law as stated by the Supreme Court of Iowa in the cases cited, is the law of this court in this case.

ISAAC COOK,
For Plaintiffs in Error.

In the Supreme Court of the United States.

THE BOARD OF SUPREVISORS OF CARROLL COUNTY,
Plaintiffs in error.
vs.
THE UNITED STATES *ex. rel*, JOHN REYNOLDS,
Defendant in error.

Error to the Circuit Court for the District of Iowa.

Argument for the Defendant in Error.

STATEMENT OF THE PLEADINGS.

The United States, in relation to John Reynolds, 16th May, 1870, filed an information, Record, page 162, for a writ of mandamus to compel the levy of tax to pay a judgment rendered in favor of Reynolds, in the Circuit Court, on the 12th May, 1869, against the County of Carroll, for the sum of $19,947.00 and costs.

The petition, page 162, is in the usual form, setting out the recovery of the judgment, the issue and return of execution, "*nulla bona*;" that the Board of Supervisors are the governing body of the corporation, that it was their duty to levy a tax as early as practicable to pay off said judgment; that a demand has been made to levy the tax, and the board have neglected to do so; that the taxable property was $2,000.

That the relator has no other adequate remedy, and he prays the court for a writ of mandamus to compel such levy and the payment of said judgment.

The plaintiff in error, without putting in issue, judgment, executions, return and demand, sets out the whole record on which the judgment was recovered, three hundred and fourteen counts, which, perhaps, are not necessary to a full understanding of the case.

The defendant (Record, 164) demurred to the information, because:

1st. The information does not aver when a demand was made, and therefore it cannot be determined whether ample time has elapsed since demand was made.

2d. Whether sufficient time has elapsed, is a conclusion of law, and insufficient to guard a cause of action.

3d. The information does not show that the defendants have not levied all the taxes they are permitted by law to levy.

This demurrer was overruled and abandoned, the party not abiding by it, and on the 18th May, 1870, the court ordered an alternative writ to issue (Record, 164), and it was issued on 2d Sept., 1870. On the 17th October, 1870, the County Auditor filed a return for the Board of Supervisors, on the 6th of Sept., 1872, and a tax of two mills on the dollar to apply on said judgment, and to continue from year to year, until the judgment was satisfied; two mills

on the dollar made a tax on the valuation of $2,000,000, of four thousand dollars a year.

On 10th May, 1871, had time to make a further return to the alternative wtit; and on 12th May they returned, as a cause why a peremptory writ should not issue:

1. That the indebtedness on which the judgment was founded was ordinary county warrants, for ordinary expenses.

That the supervisors in 1870, and intend, in 1871, to levy four mills on the dollar, which is the maximum allowed by law.

2.	That in Jan., 1867, the county debt was	$15,730.73
3.	During 67; warrants were issued for	53,050.64
	" 68 " "	48,943.42
	" 69 " "	54,528.46
		172,252.25
4.	That there was paid on this debt during the three years,	30,393.53
	Balance,	$141,859.52

That the only public improvement, as the result of that expenditure, was a court house worth $2,500, and bridges worth $8,000 to $10,000 That the reasonable expenses of the county were about $14,000. That during these three years there was a corrupt confederacy and combination between the county officers and a majority of the board for the express purpose, and with the design, of fraudulently and without considerations, issuing to each other and divers persons, large amounts of county warrants. That in pursuance of this corrupt combination all the above debt, including plaintiffs', on which his judgment was rendered, was created.

That various judgments had been rendered against the county, including the plaintiffs' judgment. That the Iowa

railroad company had, as a tax payer, filed a bill in chancery in this court against Carroll County and all the plaintiffs in said judgments which was still pending. That the county had taken no steps to set aside said judgment, because it was controlled by said combination. They ask the court of law to continue this cause until said bill is heard. That on 6th September, 1870, the county had levied a half mill on the dollar to pay said judgment; that said tax was levied in pursuance of said combination, and county ought not to be bound by it (see record 167, 168).

The relator record 169, demurred to the return:

1. Because it was insufficient in law.

2. Because there is no limit to the amount of the levy, except the amount of the judgment.

3. The levy of a less amount, than sufficient to pay the whole judgment, is not in compliance with the writ.

4. It is no defence to the writ, that the officers of the county have committed frauds or issued warrants unlawfully, to which the plaintiff is not alleged to be a party.

5. None of the facts set up show any bar to the writ.

This demurrer was sustained; the defence abided by it; took a writ of error, with supersedeas bond, and the cause is now here.

The return which sets up matters in bar of judgment, came too late. If the party has neglected to defend the judgment, he cannot set up to the mandamus, matters which ought to have been set up then.

The pendency of chancery proceedings do not stop law proceedings. If the defendant did not apply for and get an injunction, he cannot pray a stay of proceedings at law.

The writ of the railroad company was no bar either at law or equity.

A tax-payer has not such an interest as entitles him to intervene in a suit against the county to enforce a claim against it, except when the officers refuse to make the defence.

Dodge vs. Woolsey, 18 Howard, 331.
Cornell College vs. Iowa Co., 32 Iowa, 520.

The question is to the duty of the defendants to levy a tax sufficient to pay the judgment, without regard to the ordinary power of taxation, has been settled by the court, and requires no argument now.

Butz vs. Muscatine, 8 Wallace, 575.

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Globe Steam Print, Davenport.